No. 21-1372

In the Supreme Court of the United States

HOLLIE ADAMS, *ET AL.*
Petitioners

v.

TEAMSTERS UNION LOCAL 429, *ET* AL.
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

COMMONWEALTH RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTION PRESENTED

When public employees voluntarily joined a union and affirmatively authorized union dues to be deducted from their paychecks, did their public employer violate the First Amendment by making those deductions?

PARTIES TO THE PROCEEDING

In the proceedings below, petitioners Hollie Adams, Jody Weaber, Karen Unger, and Chris Felker were the plaintiffs and, thereafter, the appellants.

Teamsters Union Local 429 and the County of Lebanon were defendants in the district court and appellees in the Court of Appeals, as were four Commonwealth of Pennsylvania officials (Attorney General Josh Shapiro and Pennsylvania Labor Relations Board members James M. Darby, Albert Mezzaroba, and Robert H. Shoop, Jr., in their official capacities).

RELATED PROCEEDINGS

This case arises directly from the decision of the Third Circuit in *Adams v. Teamsters Local Union 429*, No. 20-1824 (3d Cir.) (judgment entered January 20, 2022).

The Third Circuit affirmed the entry of summary judgment by the district court in favor of all defendants in *Adams v. Teamsters Local Union 429*, No. 1:19-CV-336 (M.D. Pa. March 31, 2020).

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OPINIONS BELOW

Middle District of Pennsylvania Magistrate Judge Martin C. Carlson recommended that summary judgment be entered in favor of all defendants and against the plaintiffs on all of their claims (App.12-App.41). District Judge Sylvia H. Rambo adopted those recommendations in full (App.42-App.50, App.51-App.52).

In a non-precedential decision authored by Judge Roth (joined by Judges Chagares and Porter), the Court of Appeals affirmed the summary judgment ruling in favor of all defendants (App.1-App.11). The Court of Appeals opinion is unpublished but is available electronically at 2022 WL 186045 (3d Cir. Jan. 20, 2022).

STATEMENT OF THE CASE

1. At all relevant times, Petitioners here were employees of Lebanon County, Pennsylvania. When hired (or soon thereafter), all four chose to join Teamsters Union Local 429, which represented county workers. Petitioners then signed individual union authorization cards, allowing union dues to be deducted from their pay. App.13-App.14.[1]

Janus v. Am. Fed. of State, Cty., and Mun. Emps., Council 31, 138 S.Ct. 2448 (2018), explicitly overruled *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977),

[1] Had Petitioners opted not to join Local 429, fair share fees (in a lower amount) would have been deducted from their paychecks. *See* 3d Cir. Appx. at 105 (¶ 5).

which had been the law for four decades. Petitioner Mark Janus, an Illinois state employee, refused to join the union representing the public employees at his workplace, but was nevertheless required by state law to pay the union an "agency fee." *Janus* held that the agency fee requirement violated the free speech rights of non-member public employees by compelling them to subsidize their unions' private speech. *Id.* at 2486.[2]

Soon after the *Janus* decision was issued, Petitioners resigned from their union and ongoing dues deductions from their paychecks ceased. App. 14. Furthermore, the union refunded those dues that had been deducted between the date of Petitioners' resignation requests and the final processing of those requests. *Id.* Petitioners explicitly concede this crucial series of events. Pet. at 6.

2. Seeking monetary, declaratory and injunctive relief, Petitioners filed a two-count complaint against Lebanon County (their employer), Local 429 (the union from which they had recently resigned), and four Commonwealth officials (the Attorney General and the members of the Pennsylvania Labor Relations Board). In Count I, against the county and the union, Petitioners relied on *Janus* to raise a dues-related claim, based on the First Amendment. In Count II – which is not being pursued in this Court – they challenged the constitutionality of the exclusive

[2] Before *Janus*, and consistent with *Abood*, employees who declined to join a union selected by their co-workers were not assessed full union dues but were instead assessed a lower, but still mandatory, "agency fee" (amounting to a percentage of the union dues). *Janus*, 138 S.Ct. at 2460. (In Pennsylvania parlance, agency fees are known as "fair share fees.")

representation provision of Pennsylvania's Public Employee Relations Act, 43 P.S. § 1101.606 ("PERA").

In a comprehensive Report and Recommendation, the assigned Magistrate Judge concluded that summary judgment should be entered in favor of all defendants, and against Petitioners, on all claims. App.12-App.41. First, Petitioners' requests for prospective relief were moot, because they had withdrawn from the union, were no longer subject to dues deductions, had received dues refunds, and – in light of *Janus* – were no longer subject to future deductions. App.26. Given the "paradigm shift in the law" occasioned by the *Janus* decision, as well as the parties' compliance with their obligations, there was no need for any prospective equitable relief. App.31. Moreover, Petitioners' damages claims failed too, because, until *Janus*, the defendants had no reason to question the lawfulness of their conduct (and, thereafter, Petitioners were promptly made whole). App. 32. Plus, as courts throughout the country had recognized, there was a good-faith defense to liability for payments that had been collected by public employers, for unions, before *Janus* settled the law. App. 32-35.

The district court adopted the recommendations of the Magistrate Judge in their entirety. App.42-App.52.

3. On appeal, the Third Circuit affirmed. App.1-App.11. That Court observed that, when Petitioners began working for the county, they specifically chose to become union members and, therefore, to pay full dues (rather than decline to join the union and pay lower fair share fees instead). App.3. Before the Court

of Appeals, Petitioners nevertheless argued that their First Amendment rights were violated because, even before *Janus*, "they should have had the choice to pay dues or pay nothing at all." App. 4.

The Court of Appeals rejected Petitioners' contentions. Relying on recent Circuit precedent involving analogous facts,[3] the Court of Appeals held that Petitioners "lack[ed] standing to seek a refund of union dues paid before they resigned the union." App.6. Moreover, their "claims for prospective and declaratory relief [were] moot because they [had] not shown their employers or the union will continue to assess union dues." *Id.* Indeed, by the time the Court of Appeals ruled, Petitioners had already been fully reimbursed for any sums that had been deducted from their pay after their resignations from the Union. *Id.*

REASONS FOR DENYING THE WRIT

This Court grants a petition for writ of certiorari "only for compelling reasons." S.Ct. Rule 10. Petitioners present none.

Much as Petitioners clearly wish it were otherwise, the particular decision they question does not warrant review. By the time their case reached the Court of Appeals, they were no longer enmeshed in any justiciable controversy. As to any broader legal question, there is no circuit split warranting this Court's attention. And in any event, the outcome of

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[3] *LaSpina v. SEIU Pennsylvania State Council*, 985 F.3d 278, 286-287 (3d Cir. 2021).

this case was and is entirely consistent with *Janus* and with existing post-*Janus* jurisprudence.

I. Petitioners Seek "Review" Of An Alleged First Amendment Issue That The Court Of Appeals Did Not And Could Not Address.

Petitioners' request for certiorari is infected with fatal jurisdictional defects: They lack standing and their case is moot.

Under Article III of the Constitution, federal courts may only decide "Cases" and "Controversies." *See, e.g., Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 160 (2016); *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90-91 (2013). This requirement subsists through all stages of judicial proceedings, trial and appellate. *Id. Accord Spencer v. Kemna*, 523 U.S. 1, 7 (1998). Thus, "federal courts do not adjudicate hypothetical or abstract disputes." *TransUnion LLC v. Ramirez*, 141 S.Ct. 2190, 2203 (2021). Nor do they issue advisory opinions. *Id.* Yet at this point, that is what Petitioners seek.[4]

Once Petitioners resigned from Local 429 and were issued dues refunds, there was nothing more for them to litigate. They – as former union members – had been made financially whole. Moreover, as the Court of Appeals recognized, Petitioners lacked standing to seek any refund of membership dues they had paid *before* the law changed because they could not "tie the payment of *those* dues to the Union's unconstitutional

[4] Recall that Petitioners are four individual former union members; they never sought class certification.

deduction of fair-share fees from nonmembers." App.5 (quoting *LaSpina*, 985 F.3d at 281; emphasis added).

In addition to their lack of standing, any possible claim by Petitioners for prospective declaratory and injunctive relief was properly deemed moot. App.6. Dismissal of an outwardly moot action may be avoided if the conduct being challenged is "capable of repetition" but likely to evade review. *See, e.g., Alvarez v. Smith*, 558 U.S. 87, 93 (2009). Here, however, there was and is no prospect that any of the Petitioners will again be assessed union dues. In fact, Petitioners themselves have control over any future dues obligations they might ever incur (should they choose to continue to work for the County and affirmatively elect to rejoin Local 429 – an unlikely prospect).

In short, there is no longer any justiciable controversy between Petitioners and any of the Respondents. *See* App.5-App.6. Thus the Court is without jurisdiction to entertain the petition. *Cf. In the Interest of T.W.P.*, 388 U.S. 912 (1967) (certiorari denied because case was moot).

II. There Is No Circuit Split That Would Justify Granting The Petition.

Again, a petition for certiorari will only be granted for "compelling reasons." S.Ct. Rule 10. Though obviously dissatisfied with the lower courts' interpretation and application of *Janus*, Petitioners do not even attempt to come within Rule 10's demanding terms. In fact, they virtually concede their inability to do so.

The Court may grant certiorari if "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter." S.Ct. Rule 10(a). Petitioners openly acknowledge that there is no circuit split here. Indeed, Petitioners unequivocally assert that the decision of the Court of Appeals was "*consistent* with other appellate courts[.]" *See* Pet. at 2-3 (emphasis added).

More specifically: In addition to *LaSpina*, upon which the Court of Appeals explicitly relied, Petitioners list four other decisions that, by their own admission, also support the Court of Appeals' determination here (although Petitioners do not discuss any of them in detail). Pet. at 2-3. These include published opinions by the Ninth and Seventh Circuits,[5] along with two newly-minted but non-precedential rulings by the Third Circuit.[6] Crucially, Petitioners do not – indeed cannot – cite any rulings going the other way. That alone should suffice to justify denial of the instant petition.

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[5] *See Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020); *Bennett v. Council 31, AFSCME,* 991 F.3d 724 (7th Cir. 2021).

[6] *See Oliver v. SEIU Local 668,* 830 Fed. Appx. 76 (3d Cir. 2020); *Fischer v. Governor of New Jersey*, 842 Fed. Appx. 741 (3d Cir. 2021).

III. Substantively, The Decision Of The Court Of Appeals Is Wholly Consistent With *Janus* And Subsequent Cases.

Under S.Ct. Rule 10(c), a petition may possibly be granted if a United States court of appeals "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Despite Petitioners' protestations, however, this is not such a case.

Focusing on a passage in *Janus* itself about "affirmative consent," Petitioners question whether "lower courts" have properly adhered to that aspect of the *Janus* ruling. Pet. at 8-11. Petitioners argue that they, as former union members, could never have given the "affirmative consent" necessary for the extraction of union dues from their paychecks when, until *Janus*, they had no way of knowing they had a First Amendment right not to pay any dues at all. *See* Pet. at 2. Petitioners therefore seek recovery of all dues paid to the union prior to *Janus*. But *Janus* does not require that (and post-*Janus* court of appeals decisions do not either).

Multiple circuits have consistently concluded that the First Amendment does not shield individuals, including public employees, from their *contractual* obligations. This is so because, upon applying to join a union and signing a membership card, each individual voluntarily enters into a binding contract and is thereafter bound by its terms. There is no constitutional basis for voiding employees' existing dues contracts post-*Janus* to enable such individuals to rethink – well after the fact – whether they want to be union members or not.

Thus, in *Fischer v. Governor of New Jersey,* 842 Fed. Appx. 741 (2021) (non-precedential), the Third Circuit confirmed that union membership agreements are enforceable contracts. *Id.* at 752 n.17. Moreover, *Fischer* explicitly rejected any argument that the defendants in that matter were obligated "to obtain an affirmative First Amendment waiver from Plaintiffs before deducting union dues from their paychecks." *Id.* at 753 n.18.

In arriving at its substantive conclusions, *Fischer* adhered to the Ninth Circuit's then-recent decision in *Belgau v. Inslee*, 975 F.3d 940 (2020), which had emphatically "join[ed] the swelling chorus of courts recognizing that *Janus* does not extend a First Amendment right to avoid paying union dues." *Id.* at 951 & n.5. *Belgau* stressed that *Janus* "in no way created a new First Amendment waiver requirement for union members before dues are deducted pursuant to a voluntary agreement." *Belgau*, 975 F.3d at 952.

Bennett v. Council 31, AFSCME, 991 F.3d 724 (7th Cir. 2021), analyzed both *Fischer* and *Belgau* and arrived at consistent conclusions. *See Bennett*, 991 F.3d at 730-733. Then, *Hendrickson v. AFSCME Council 18,* 992 F.3d 950 (10th Cir. 2021), rejected analogous claims brought by an individual who – like Petitioners – had recently resigned from his union (so dues deductions had stopped). That individual's request for prospective relief was therefore moot, and his claim for retrospective damages failed on the merits "under basic contract principles." *Id.*, 992 F.3d at 957-958. Crucially, the court added, "[c]hanges in decisional law, even constitutional law, do not relieve

parties from their pre-existing contractual obligations." *Hendrickson*, 992 F.3d at 959.

In sum, rather than diverge from *Janus,* the Courts of Appeals have followed it conscientiously. They have addressed claims similar to what Petitioners now seek to pursue and, in every reported instance, have rejected those claims.[7] Thus, there is no confusion among the courts of appeals on the proper application of *Janus* or on what the First Amendment does and does not require in unionized public sector workplaces. Against this backdrop, there is no reason for the Court to grant certiorari in Petitioners' case.

[7] The Court denied certiorari in *Belgau* on June 21, 2021. Soon thereafter, on November 1, 2021, petitions for certiorari were denied in *Bennett*, *Hendrickson*, and *Fischer*.

CONCLUSION

The Court should deny the petition.

Respectfully submitted,

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